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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
**CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPLICATION NO.3190 OF 2007

Mr. Shashjank H. Shah ..Applicant
v/s.
Mr. Bharat Kantilal Shah & anr. ..Respondents

Mr.G.K.Pendse for the Applicant
Mr.P.A.Pol, APP for the State

**CORAM : B.H.MARLAPALLE,J.**
**DATED : 19th October, 2007**

**P.C.**

Heard Mr. Pendse, the learned counsel for the applicant who is impleaded as accused in CC no. 2052/SS/2005 filed under section 138 of the Negotiable Instrument Act, 1881 with prayers that during the trial of the said case after the evidence of the Complainant was clossed and the statement of accused was recorded under section 313 of Cr.P.C., an application came to be filed to procure the subsequent handwriting of the complainant as well as the accused so as to send the same for examination to the handwriting expert of the State Government so as to enable the Court to have a just and proper decision of the case. This application has been rejected by the impugned order dated 1-7-2007.

2. It was observed by the learned Metropolitan Magistrate that when accused himself has admitted to

have issued the cheques in his statement under section 313 of Cr.P.C., there is no necessity to procure the specimen signature and refer it to the handwriting expert. Mr. Pendse submitted that the cheques were also referred to the handwriting expert along with handwriting of both, the complainant and the accused, so as to find out the author of cheques which subsequently failed. As per Mr. Pendse the cheques were given blank by way of security and they were not issued in discharge of the liability of repayment of loan.

3. In the statement recorded under section 313 of Cr.P.C., the accused admitted to have issued 5 cheques bearing dates 1-12-2003, 16-12-2003, 30-12-2003, 1-1-2004 and 16-1-2004 for Rs. 20,000/-, Rs.25,000/-, Rs.25,000/-, Rs. 30,000/- and Rs. 50,000/- respectively drawn on Dena Bank,Nagdevi , Mumbai in favour of the complainant. In the reply to the statutory demand notice on behalf of the complainant it was stated as under:

> My client states that as a matter of security he forwarded five cheques as mentioned during the period from 1996 to 1999. The last cheque was issued somewhere in the month of February 1999. My client denies the dates put on the cheques and put your client to the strict proof thereof.

4. By reading the statement recorded under section 313 of Cr.P.C. it is very clear that the accused not only admitted to have issued the cheques but has specifically admitted the dates of cheques and in his reply to the demand notice, he tried to put up the case that the cheques were forged.

5. In my considered view, the learned Judge of the trial Court was right in rejecting the application and,therefore, no interference is called for in the impugned order.

6. Application is rejected.

**[B.H.MARLAPALLE,J.]**